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THE RESULTS IN THE INSULAR CASES. — Of the last two Insular Cases, decided Dec. 2, 1901, the second Dooley Case is the more important. The plaintiff brought an action to recover for duties collected under the provisions of the Foraker Act levying duties, after the cession of Porto Rico, on goods brought into that Island from the United States, the act further providing that the moneys received should be disposed of for the benefit of Porto Rico, and that the tariff was to cease upon the establishment of a local system of taxation by the legislative assembly of Porto Rico and upon proclamation thereof by the President. 31 U. S. Stat. 77. Mr. Justice Brown delivered the opinion of the Court sustaining the constitutionality of the act, Mr. Justice White delivering a concurring opinion. In both opinions the ground taken is that the word "imports," or "exports," in the Constitution was intended and had always been construed to mean from, or to, foreign countries — that is, in the words of Mr. Justice White, "countries not within the sovereignty nor subject to the legislative authority of the United States;" that since Porto Rico was not such a foreign country, a tax on goods brought into Porto Rico from the United States was not, therefore, a "tax . . . upon articles exported from a state." Furthermore the establishment of temporary provisions such as those in the Foraker Act was supported as an exercise of the "paramount power" to legislate for the territories, especially as moneys collected were to be used for the benefit of Porto Rico. In the dissenting opinion by Mr. Chief Justice Fuller, in which Mr. Justice Harlan, Mr. Justice Brewer, and Mr. Justice Peckham concurred, it was urged that the act was admittedly unconstitutional if Porto Rico remained foreign; that the provisions could not be sustained if the Island became domestic, since then the goods were not imported into Porto Rico from a foreign

country and since Congress is given power to levy duties only on imports from foreign countries; and that the act violated the intention indicated by the Constitution both to prevent discrimination between different parts of the country and to deny to Congress the power of taxing goods sent out of the country irrespective of the place of destination or of the place where the duties might be collected. It was further suggested that if the "export clause" protected goods going to foreign countries only, there was nothing to prevent the taxation of property sent from state to state. In reply to this, however, it was intimated in the opinion of the Court that the power to regulate interstate commerce is far more restricted than the power to legislate for the territories and that a tax such as that suggested might not comply with the "uniformity clause."

In the remaining case, *The Diamond Rings Case*, the government contended that rings brought into this country from the Philippines without the payment of duties, after the ratifications of the treaty had been exchanged, were liable to forfeiture under the provisions of the Dingley Act providing for the forfeiture of goods so imported from "foreign countries." In the attempt to distinguish the status of the Philippines from that of Porto Rico it was urged, in the first place, that the former remained foreign, since at the time of the cession there existed armed resistance to the sovereignty of Spain. But the Court decided that the title of Spain was not thereby affected and that the government, when suppressing an insurrection as a resistance to its lawful authority, could not at the same time contend that the cession did not pass full title to the Islands. It was further insisted for the government that the Islands remained foreign, since, after the exchange of ratifications, the Senate passed a resolution to the effect that "by the ratification . . . it is not intended . . . to permanently annex" the Philippines. It was decided, however, that such a resolution, at least when not assented to by the House of Representatives nor signed by the President, did not indicate and could not alter the intention to be drawn from the treaty. As the status of the Philippines was therefore essentially the same as that of Porto Rico, the Court followed the decision rendered last spring in *De Lima* v. *Bidwell*, 182 U. S. 1 — that such imports were not subject to the payment of duties imposed on imports from "foreign countries."

Several propositions seem established by the six decisions thus far rendered. An Act of Congress imposing duties on imports from "foreign countries" does not authorize the collection of duties on imports from territory ceded to the United States. *De Lima* v. *Bidwell*, 182 U. S. 1. *The Diamond Rings Case*, decided Dec. 2, 1901. See 15 HARV. L. REV. 168. Yet an Act of Congress specifically imposing duties on imports from the ceded territory does not violate Art. I., sect. 8, § 1 of the Constitution, requiring that "all imports, duties and excises shall be uniform throughout the United States." *Downes* v. *Bidwell*, 182 U. S. 244. See 15 HARV. L. REV. 164. On the other hand, until a treaty of peace is ratified the United States military authorities have power to impose duties on articles from the United States brought into territory of the enemy under military occupation. *Dooley* v. *U. S.*, 182 U. S. 222. After the exchange of ratifications, however, in the absence of Congressional action such goods are entitled to entry into the ceded territory free of duty, the orders of the President imposing duties being void as to imports from the United States, although (*semble*) valid as regards those from other countries. *Dooley* v. *U. S.*, 182 U. S. 222. See 15

HARV. L. REV. 220.[1] Nevertheless, an Act of Congress temporarily imposing duties on articles brought into such territory from the United States, and providing that the proceeds should be used for the benefit of the territory ceded, does not violate Art. I., sect. 8, § 5 of the Constitution, requiring that "no tax or duty shall be laid upon articles exported from any state." *Dooley* v. *U. S.*, decided Dec. 2, 1901. The remaining case, upon the construction of certain acts of Congress and New York statutes, decided that a ship licensed to trade between New York and Porto Rico was engaged in a "coasting trade," and not being "from a foreign port" was not by the statute required to employ a pilot on entering New York harbor. *Huus* v. *N. Y., etc., Co.*, 182 U. S. 392. Under similar facts it would seem that the same doctrine must apply to a ship trading between this country and the Philippines.

These decisions establish clearly that Congress has a large discretion in legislating for the new possessions. While all the members of the Court seem of the opinion that such legislation is not absolutely free from restraint, the reasons supporting the conclusion differ so greatly that the extent of the restraint is entirely an open question. Furthermore, since but few clauses of the Constitution have been interpreted and since the conclusions are supported by a bare majority, the final determination of the exact legal status of the new possessions may still be thought a matter of considerable doubt.

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RECOVERY IN ASSUMPSIT OF MONEY DUE IN FUTURE. — A recent decision in a United States Court of Appeals, raises a perplexing question in damages for breach of contract. A federal statute requires all persons having building contracts with the government to furnish a bond conditioned for the "prompt payment" of material-men, and authorizes suit on the bond by the beneficiaries. By contract between the defendant, an obligor on a bond of this kind, and the plaintiff, a material-man, eighty per cent of the contract price of materials furnished each month was payable on the first of the following month, and the remaining twenty per cent when the building was completed. The defendant made several defaults in the eighty per cent payments, and the plaintiff abandoned the contract and sued at once on the bond. "Prompt payment" was construed as meaning payment when due, and it was held that the full contract price could be recovered upon the ground that the deferred twenty per cent fell due at once on breach by the defendant and refusal by the plaintiff to proceed. *Mullin* v. *United States*, 109 Fed. Rep. 817 (C. C. A., Second Circ.).

Since the action is on the bond it does not appear whether the amount recovered is based on the express contract or on a *quantum meruit*. A material breach by one party to a contract gives the other party the right to rescind and sue in quasi-contract, or to refuse to perform further and sue on the contract for damages. 14 HARV. L. REV. 317, 421. Strictly the right to rescind exists only when both parties are restored to their former position, and in England the right is kept well within these limits. *Hunt* v. *Silk*, 5 East 449. In America the injured party may generally rescind when he can and does restore or offer to restore every-

[1] In this last case the Court seems to rest the decision upon the ground stated; yet it is possible that the case did not necessarily involve anything more than a construction of the President's orders as intended to apply only to imports from "foreign countries."